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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

SI

11 **CR-02 - 0265**

12 UNITED STATES OF AMERICA,

No. CR

13 Plaintiff,

14 v.

15 SHERMAN S. SMITH,

16
17 Defendant.

VIOLATIONS: 18 U.S.C. § 1343 – Wire
Fraud; 18 U.S.C. § 1341 – Mail Fraud; 15
U.S.C. §§ 78j(b), 78ff, 78m and 17 C.F.R.
240.10b-5 – Securities Fraud; 18 U.S.C. §
1957 – Money Laundering; 18 U.S.C. §
982(a)(1) and (b)(1) – Forfeiture Allegations

SAN FRANCISCO VENUE

18
19
20 INDICTMENT

21 The Grand Jury charges:

22 I. INTRODUCTION

23 At all times relevant to this indictment:

- 24 1. Sherman S. Smith (hereafter Smith) was an investment advisor in the Northern
25 District of California and elsewhere. As part of his activity as an investment advisor, Smith
26 advised various churches and parishioners of those churches on how to plan for their financial
27 futures.
28 2. Between approximately 1994 through at least 1998, Smith was the Chairman and sole
shareholder of Sherman S. Smith and Associates, Inc., (SSS&A), an investment advisory and

INDICTMENT

1 money managing firm located in Napa, California.

2 3. Beginning at a time unknown but by approximately 1995, Smith began to operate
3 Donne Company, a consulting company that would assist churches and other religious non-profit
4 organizations with financial issues such as capital campaigns. In or about January 1998, Smith
5 incorporated his consulting business and changed the name to Donne Corporation (hereafter
6 Donne) with its principal place of business in Napa, California, in the same office building as
7 SSS&A.

8 4. From the inception of Donne, Smith was the Chairman of the Board and at least a 51%
9 shareholder.

10 II. THE SCHEME TO DEFRAUD

11 5. Between in or about September 1998 and January 2001, Smith devised and intended
12 to devise a scheme to defraud his clients and Donne's investors and to obtain money by means of
13 false and fraudulent pretenses, representations and promises by:

14 a. soliciting money from individuals and promising to invest the money in safe
15 investments that would pay interest and dividends of at least 12%, when in fact Smith would
16 divert the money to his own personal use;

17 b. offering to sell and selling shares of Donne stock to investors at the price of \$10
18 per share, a share price that Smith arbitrarily created, with the understanding that the money
19 raised would be used for the benefit of Donne and its business, when in fact Smith would divert
20 the money to his own personal use and would use only a small portion of the funds for the benefit
21 of Donne;

22 c. claiming that the Donne stock he was selling was registered with the Securities
23 and Exchange Commission, when it was not;

24 d. causing Donne to issue stock certificates to various SSS&A clients who Smith
25 owed money to in order to attempt to satisfy his personal debts and obligations to these clients;
26 and

27 e. using money from new investors to pay the interest and dividends owed to
28 previous investors and to repay principal to other investors, including himself, without disclosing

1 to the new investors that this was what he was doing with their money.

2 6. It was further part of the scheme to defraud that Smith would issue and cause others to
3 issue account statements and other documents to his clients and to Donne's investors that
4 purported to demonstrate that the clients' funds and Donne investors' investments were growing
5 and that dividends and interest were being accumulated and reinvested when, in fact, Donne was
6 actually losing money and Smith had already diverted these funds to his own personal bank
7 accounts.

8 7. It was further part of the scheme to defraud that Smith would open various bank
9 accounts in federally insured financial institutions into which he would deposit and transfer
10 investor money, which he would commingle with his own money and Donne Corporation
11 money. These accounts included, but were not limited to: account number 3008845, in the name
12 of Donne Company; account number 3118666, in the name of Sherman S. Smith, PhD; and
13 account number 3008837, in the name of SSS&A Investors, all at Napa National Bank in Napa,
14 California. These accountants also included account number 96866 in the name of Sherman S.
15 Smith, at Bank of the Blue Grass in Lexington, Kentucky, and account number 200506405 at the
16 Vintage Bank in Napa, California, in the name of Donne Corporation.

17 8. It was further part of the scheme to defraud that on or about September 8, 1998, Smith
18 met with a new client in Florida and convinced her to entrust him with her inheritance (and that
19 of her adult children and minor child) totaling approximately \$1.7 million dollars. He promised
20 her that he would invest and manage her money for her and her children, that her investment
21 would be safe, that it would earn 12% per year.

22 9. It was further part of the scheme to defraud that on or about September 28, 1998,
23 Smith caused his Florida client to transfer \$945,000 into the Donne account number 3008845 at
24 the Napa National Bank in Napa, California, from her inheritance proceeds.

25 10. It was further part of the scheme to defraud that on or about September 29, 1998,
26 Smith transferred \$800,000 from the Donne account number 3008845 into his personal account
27 number 3118666 at the Napa National Bank.

28 11. It was further part of the scheme to defraud that between October 1998 and January

1 1999, Smith caused his Florida client to transfer approximately \$825,000, the balance of her
2 inheritance into account number 96866 at the Bank of the Bluegrass in Lexington, Kentucky.

3 12. It was further part of the scheme to defraud that in or about November, 1998, Smith
4 convinced a new investor in West Virginia to invest in Donne. Smith promised the investor that
5 his investment would be safe, that he would not lose his principal, that he could expect to triple
6 his money in as little as five years and that he would earn 12% per year on his investment which
7 would be reinvested for him by Donne.

8 13. It was further part of the scheme to defraud that on or about December 15, 1998 at
9 Smith's direction, the West Virginia investor caused his bank, the One Valley Bank in West
10 Virginia, to transfer approximately \$257,000 to Smith's personal bank account number 96866 at
11 the Bank of the Bluegrass in Lexington, Kentucky.

12 COUNT ONE: 18 U.S.C. § 1343 (Wire Fraud)

13 14. Paragraphs One through Thirteen are realleged as if fully set forth here.

14 15. On or about September 29, 1998, in the Northern District of California and
15 elsewhere, the defendant

16 SHERMAN S. SMITH

17 having knowingly and intentionally devised and intended to devise a scheme and artifice to
18 defraud clients and investors, and to obtain money and property by means of false and fraudulent
19 pretenses, representations, and promises, and, for the purpose of executing that scheme,
20 knowingly transmitted and caused to be transmitted the following wire communications in
21 interstate commerce, a wire transfer in the amount of \$945,000 from Jax Navy Federal Credit
22 Union, account number 389971, Jacksonville, Florida to Napa National Bank, account number
23 3008845 in Napa, California.

24 All in violation of Title 18, United States Code, Sections 1343.

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COUNTS TWO THROUGH EIGHTEEN: 18 U.S.C. § 1341 (Mail Fraud)

16. Paragraphs One through Thirteen are realleged as if fully set forth here.

17. Federal Express and United Parcel Service were commercial interstate carriers.

18. On or about the dates set forth below in the Northern District of California and elsewhere, the defendant

SHERMAN S. SMITH

having knowingly and intentionally devised and intended to devise a scheme and artifice to defraud clients and investors, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and, for the purpose of executing that scheme, knowingly caused to be delivered by the United States Postal Service and commercial interstate carriers according to the directions thereon the following documents:

COUNT	DATE	TYPE OF DOCUMENT	FROM/TO
TWO	12/15/98	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia
THREE	12/31/98	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia
FOUR	3/10/99	Account Statement - Tithes and Offerings and Account Statement for Daughter	From: Donne in Napa, California To: Client in Middleburg, Florida
FIVE	4/22/99	Account Statement for Florida Client	From: Donne in Napa, California To: Client in Middleburg, Florida
SIX	5/13/99	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia

SEVEN	6/4/99	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia
EIGHT	6/30/99	Account Statement for Florida Client - 2 ND Quarter Ended 6/30/99	From: Donne in Napa, California To: Client in Middleburg, Florida
NINE	9/30/99	Account Statement for Florida Client - 3 rd Quarter Ended 9/30/99	From: Donne in Napa, California To: Client in Middleburg, Florida
TEN	9/30/99	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia
ELEVEN	11/25/99	Donne Corporation Stock Certificates	From: Donne in Napa, California To: Client in Middleburg, Florida
TWELVE	12/31/99	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia
THIRTEEN	3/17/00	Letter to Florida Client Enclosing Various Docs. Re: Sell-off of Donne Stock	From: Donne in Napa, California To: Client in Middleburg, Florida
FOURTEEN	3/31/00	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia
FIFTEEN	4/03/00	Letter to Florida Client Re: Sell-off of Donne Stock	From: Donne in Napa, California To: Client in Middleburg, Florida
SIXTEEN	6/23/00	Letter to Florida Client	From: Donne in Napa, California To: Client in Middleburg, Florida

SEVENTEEN	6/30/00	Account Totals as of 6/30/00	From: Donne in Napa, California To: Client in Middleburg, Florida
EIGHTEEN	6/30/01	Account Statement	From: Donne in Napa, California To: Investor in Martinsburg, West Virginia

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT NINETEEN: 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. §240.10b-5; (Securities Fraud)

19. Paragraphs One through Thirteen and Seventeen are realleged as if fully set forth here.

20. On or about and between September 1998 and January 2001, both dates being approximate and inclusive, within the Northern District of California and elsewhere, the defendant

SHERMAN S. SMITH

and others, knowingly and wilfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce including the mails, interstate wire transfers and interstate deliveries by interstate carriers, did (a) use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of Donne Corporation stock, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) make and cause others acting on their behalf to make untrue statements of material fact and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Donne stock.

21. Specifically, Smith did the following:

a. sold stock to investors and falsely represented that the funds used to purchase the stock would be used for Donne purposes;

b. sent to his investors monthly account statements which purported to

1 demonstrate that their Donne investments were growing at the rate of 12% and that these
2 additional amounts were being reinvested into the investors' accounts when in fact the money
3 had been diverted to Smith's personal use and the corporation was in debt and losing money; and

4 c. sent to his investors payments described as dividends to make it appear that
5 Donne was profitable when in fact it was in debt and losing money.

6 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code
7 of Federal Regulations, Section 240.10b-5.

8 COUNTS TWENTY THROUGH TWENTY - FIVE: 18 U.S.C. §§ 1957 and 2 (Money
9 Laundrying and Aiding and Abetting)

10 22. Paragraphs One through Thirteen, Seventeen and Twenty-One are realleged as if
11 fully set forth here.

12 23. On or about the dates specified in Counts Twenty through Twenty-Five below, in the
13 State and Northern District of California, and elsewhere, the defendant

14 **SHERMAN S. SMITH**

15 did knowingly engage and attempt to engage in monetary transactions, affecting interstate
16 commerce, in criminally derived property of a value greater than \$10,000, that is the withdrawal,
17 transfer, and exchange of monetary instruments using federally insured financial institutions, in
18 the amounts set forth below, such property having been derived from a specified unlawful
19 activity, that is, mail fraud in violation of 18 U.S.C. § 1341 and wire fraud in violation of 18
20 U.S.C. § 1343, and securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R.
21 §240.10b-5:

COUNT	DATE	FROM ACCOUNT	AMOUNT	TO ACCOUNT
TWENTY	10/05/98	Sherman S. Smith, PhD., Napa National Bank, Acc. #3118666 in Napa, California, check number 2803 made payable to Willken Inc.	\$100,000.00	Willken Inc., to pay for seller financing on real property located in Napa, California

TWENTY - ONE	10/06/98	Sherman S. Smith, PhD., Napa National Bank, Acc. #3118666 in Napa, California	\$600,000.00	Sherman S. Smith, PhD., Bank of the Bluegrass, Acc. #96866 in Lexington, Kentucky
TWENTY - TWO	10/16/98	Sherman S. Smith, PhD., Bank of the Bluegrass, Acc. #96866 in Lexington, Kentucky	\$85,000.00	Sherman S. Smith, PhD., Napa National Bank, Acc. #3118666 in Napa, California
TWENTY - THREE	12/16/98	Sherman S. Smith, PhD., Bank of the Bluegrass, Acc. #96866 in Lexington, Kentucky	\$75,000.00	Sherman S. Smith, PhD., Napa National Bank, Acc. #3118666 in Napa, California
TWENTY - FOUR	1/7/99	Sherman S. Smith, PhD., Bank of the Bluegrass, Acc. #96866 in Lexington, Kentucky	\$20,000.00	Sherman S. Smith, PhD., Napa National Bank, Acc. #3118666 in Napa, California
TWENTY - FIVE	1/19/99	Sherman S. Smith, PhD., Bank of the Bluegrass, Acc. #96866 in Lexington, Kentucky	\$20,000.00	Sherman S. Smith, PhD., Napa National Bank, Acc. #3118666 in Napa, California

All in violation of Title 18, United States Code, Sections 1957 and 2.

FORFEITURE ALLEGATION - 18 U.S.C. § 982(a)(1) and (b)(1)

24. Paragraphs One through Thirteen, Seventeen, Twenty-One and Twenty-Three above are realleged as if fully set forth here.

25. As a result of the offense alleged in Count Twenty-One above, the defendant
SHERMAN S. SMITH
shall forfeit to the United States, all property involved in and traceable to said offense, including but not limited to, real property located at 4299 Mt. Horeb Pike, Lexington, Kentucky, further described in Exhibit A, attached hereto and incorporated herein.

29. If as a result of any act or omission of the defendant, any of the property

a. cannot be located upon the exercise of due diligence,

b. has been transferred or sold to, or deposited with, a third party,

- 1 c. has been placed beyond the jurisdiction of the Court,
- 2 d. has been substantially diminished in value, or
- 3 e. has been commingled with other property that cannot be divided without
- 4 difficulty, any and all interest that the defendant has in other property shall be forfeited to the
- 5 United States.

6 All in violation of Title 18 United States Code, Section 982(a)(1) and (b)(1).

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1 FORFEITURE ALLEGATION - 18 U.S.C. § 982(a)(1) and (b)(1)

2 30. Paragraphs One through Thirteen; Seventeen, Twenty-One and Twenty-Three above
3 are realleged as if fully set forth here.

4 31. As a result of the offenses alleged in Counts Twenty and Twenty-Two through
5 Twenty-Five above, the defendant

6 SHERMAN S. SMITH

7 shall forfeit to the United States, all property involved in and traceable to said offenses, including
8 but not limited to \$300,000.

9 32. If as a result of any act or omission of the defendant, any of the property

10 a. cannot be located upon the exercise of due diligence,

11 b. has been transferred or sold to, or deposited with, a third party,

12 c. has been placed beyond the jurisdiction of the Court,

13 d. has been substantially diminished in value, or

14 e. has been commingled with other property that cannot be divided without

15 difficulty, any and all interest that the defendant has in other property, not to exceed \$300,000,
16 shall be forfeited to the United States.


17 All in violation of Title 18 United States Code, Section 982(a)(1) and (b)(1).

18
19 DATED:

A TRUE BILL.

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21 FOREPERSON

22 KEVIN V. RYAN
23 United States Attorney

24 
25 CHARLES BEN BURCH
Chief, Criminal Division

26 (Approved as to form: )

27 AUSA Bornstein
28

INDICTMENT

EXHIBIT A

Being all of Parcels 1, 2, and 3 of the Consolidation Minor Record Plat of Pinnacle Farm, Tracts 2, 3, 4 and 7, Lexington, Fayette County, Kentucky, as shown by Map or plat thereof of record in Plat Cabinet L, Slide 301, in the Fayette County Clerk's office, said property being also known as 4299 Mt. Horeb Pike;

Being the same property conveyed to Sherman S. Smith and Kathy A. Smith, Husband and wife, by deed dated August 19, 1998, of record in Deed Book 2006, Page 293, by deed dated October 12, 2000 of record in Deed Book 2162 , Page 226 and by deed dated October 12, 2000 of record in Deed Book 2162, Page 232 in the Fayette County Clerk's Office.

EXHIBIT A